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AND THE PROPOSED CLASS**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**DANIEL J. KOLODZIEJ,
individually and on behalf of all
others similarly situated,**

Plaintiff

v.

**SAMSUNG ELECTRONICS
AMERICA, INC.**

Defendant

**CASE NO. 5:18-cv-00768-
BLF**

JURY TRIAL DEMANDED

CLASS ACTION

**PLAINTIFF’S CLASS ACTION
COMPLAINT FOR:**

- (1) Violation of California Consumers
Legal Remedies Act, Civil Code
§1750, *et seq.*;**
- (2) Unfair Competition Law, Bus. &
Prof. Code §17200, *et seq.***
- (3) Violations of the False Advertising
Law (“FAL”), Cal. Bus. & Prof. Code
§ 17500, *et seq.***
- (4) Fraud**

PLAINTIFF’S CLASS ACTION COMPLAINT

COMES NOW, Plaintiff Daniel J. Kolodziej (“Plaintiff”), individually and
on behalf of all other similarly situated, by and through Plaintiff’s undersigned

1 counsel, and brings this action against SAMSUNG ELECTRONICS AMERICA,
2 INC. (hereinafter “Samsung” or “Defendant”), alleging, upon personal knowledge
3 as to Plaintiff’s individual actions and upon information and belief and/or counsel’s
4 investigation as to all other matters, the following:

5
6 **NATURE OF THE ACTION**
7

8 1. This is a consumer protection class action arising out of the purchase
9 of the Samsung Galaxy S7 designed, marketed, and sold by Defendant, including,
10 but not limited to the following models: Samsung Galaxy S7, S7 Edge, and S7
11 Active (collectively, the “Galaxy S7” or “Product”).

12
13 2. Galaxy S7’s are Android smartphones manufactured and marketed by
14 Samsung Electronics. The Galaxy S7 series serves as the successor to the Galaxy
15 S6, S6 Edge and S6 Edge+ released in 2015. The phones were officially unveiled
16 on 21 February 2016, during a Samsung press conference at Mobile World
17 Congress, with a European and North American release on March 11, 2016.
18

19
20 3. Galaxy S7 Phones were released in early 2016 with the tagline: “The
21 earth is made up of mostly water. We’re made up of mostly water. We need water
22 to survive. So we made a water-resistant phone.”
23

24 4. Samsung advertised and represented Galaxy S7’s waterproof quality:

25 **Because Water Happens**
26

27 Bring on the spills, splashes and dunks. Now you won’t need to put your
28

1 phone in a bowl of rice because of a little water.¹

2 5. Samsung represents that the Galaxy S7 and S7 Edge phones are IP68-
3 certified for water and dust resistance and that the Galaxy S7 and S7 Edge phones
4 are Water Resistant “in up to 5 feet of water for up to 30 minutes.”²
5

6 6. Samsung’s representations induced Plaintiff and Class Members to
7 purchase Samsung’s purportedly water-resistant phones. Had Plaintiff and these
8 consumers known that Samsung’s representations of water resistance were not
9 accurate, they would not have purchased a Galaxy S7 phone, or they would have
10 paid significantly less for the Galaxy S7.
11

12 7. Confronted with customer complaints that the Galaxy S7 Phones are
13 not water resistant, Defendant has systematically denied this fact. Defendant
14 encouraged Plaintiff and Class Members to use the Galaxy S7 Phones in the water,
15 knowing that it would damage these phones.
16

17 8. Plaintiff brings claims individually and on behalf of a class of all other
18 similarly situated purchasers of the defective Product against Defendant for
19 violations of California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1750,
20 et seq., violations of California’s Unfair Competition Law, Cal. Bus. & Prof. Code
21 § 17200, et seq. (“UCL”), Violations of the False Advertising Law (“FAL”), Cal.
22 Bus. & Prof. Code § 17500, et seq., and fraud.
23
24
25
26

27 ¹ See, <https://www.Samsung.com/us/mobile/phones/galaxy-s/Samsung-galaxy-s7-32gb-at-t-black-onyx-sm-g930azkaatt/>, last visited 1/1/2018).

28 ² See, Samsung, <https://www.Samsung.com/us/support/answer/ANS00047867/>, last visited 1/1/2018).

9. Plaintiff seeks an order requiring Defendant to, among other things: (1) cease the unlawful material representations and omissions regarding the water resistance of the Galaxy S7 Phones; (2) conduct a corrective advertising campaign to alert the public of the defect; (3) pay damages and restitution to Plaintiff and Class members; and (4) reimburse Plaintiffs and Class members for the loss of use and value of the Galaxy S7.

PARTIES

10. Plaintiff Daniel J. Kolodziej (“Plaintiff”) is an individual citizen of the state of California, residing in the County of Los Angeles.

11. Defendant Samsung Electronics America, Inc. is a corporation organized under the laws of the State of New Jersey. Its principal place of business is in Ridgefield Park, New Jersey. Samsung Electronics distributed and/or sold consumer electronic devices, including the Galaxy S7 smartphone, in this judicial District and throughout the state of California. Samsung is a wholly-owned subsidiary of Samsung Electronics Co., Ltd., a subsidiary of Samsung Group, which is a Korean multinational corporation headquartered in Suwon, South Korea.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this class action pursuant to 28 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because:

(a) the number of members of the proposed plaintiff class is greater than

1 100;

2 (b) at least one Plaintiff and Defendant are citizens of different states; and

3
4 (c) the aggregated claims of the individual Class members exceed
5 \$5,000,000.00, exclusive of interest and costs.

6 13. This Court has personal jurisdiction over Plaintiff because Plaintiff
7
8 resides in California and submits to the Court's jurisdiction in this case.

9 14. This Court has personal jurisdiction over Defendant because
10 Defendant, personally or through an agent, engaged in one or more of the following
11 actions: (a) operating, conducting, engaging in, or carrying on a business or
12 business venture in this state or having an office or agency in this state and has
13 sufficient minimum contacts with California, including: Samsung Media Solutions
14 Center America, a division of Samsung Electronics America, Inc., is based out of
15 Mountain View, California;³ (b) committing a tortious act within this state; (c)
16 causing injury to persons or property within this state arising out of an act or
17 omission by the Defendant outside this state, if, at or about the time of the injury,
18 the defendant was engaged in solicitation or service activities within this state; or
19 products, materials, or things processed, serviced, or manufactured by the defendant
20
21
22
23

24
25 ³ See Samsung, U.S. Divisions, available at: http://www.Samsung.com/us/aboutSamsung/Samsung_electronics_us_divisions/; <http://www.Samsung.com/ContactUs/ElectronicsAmerica/index.htm>;
26 <http://www.Samsung.com/ContactUs/InformationSystemsAmerica/index.htm>; see also Gannes, Liz, "Samsung
27 Confirms Four New Bay Area Offices," Allthingsd.com (Dec. 3, 2017) available at:
28 <http://anthingsd.com/20121229/SAMSUNG-confirms-four-new-bay-area-offices/>; "Samsung Electronics Announces
New Silicon Valley R&D Center," [BusinessWire.com](http://www.businesswire.com/news/home/20120919005456/en/Samsung-Electronics-Announces-Silicon-Valley-Center) (Dec. 3, 2017) available at:
<http://www.businesswire.com/news/home/20120919005456/en/Samsung-Electronics-Announces-Silicon-Valley-Center>.

1 anywhere were used or consumed within this state in the ordinary course of
2 commerce, trade, or use. Defendant, who is engaged in substantial and not isolated
3 activity within this state, whether such activity is wholly interstate, intrastate, or
4 otherwise, is subject to the jurisdiction of the courts of this state, whether or not the
5 claim arises from that activity.
6

7
8 15. This Court has personal jurisdiction over Samsung as well because
9 Samsung Strategy and Innovation Center, a global organization within Samsung's
10 Device Solutions division, is headquartered in Menlo Park, California; Samsung
11 Information Systems America is headquartered in San Jose, California; Samsung
12 Semiconductor, Inc. is headquartered in San Jose, California; and, Samsung Open
13 Innovation Center is located in Palo Alto, California.⁴
14

15
16 16. Venue is proper in this Court under 28 U.S.C. § 1391 because
17 Samsung innovates, researches, develops, improves, and markets a substantial
18 amount of phones in this District. Samsung "has been a presence in Silicon Valley
19 for more than two decades."⁵ Samsung's Media Solutions Center (a.k.a. Research
20 and Development Center)⁶, which is located in this District, "delivers innovative,
21 connected experiences across Samsung's *mobile* and digital ecosystem that enhance
22 the experience of owning a Samsung product,"⁷ is "[c]omprised of two six-story
23
24

25
26 ⁴ *Ibid.*

27 ⁵ "Samsung Electronics Announces New Silicon Valley R&D Center," BusinessWire.com (Sept. 19, 2012 at 9:00
28 AM) available at: <http://www.businesswire.com/news/home/20120919005456/en/Samsung-Electronics-Announces-Sihcon-Valley-Center>.

⁶ See *Ibid.*

⁷ See Samsung, U.S. Divisions, available at:

Footnote continued on next page

1 LEED Platinum designed office buildings totaling nearly 385,000 square feet, and
2 two parking structures,” and “serves as an epicenter of innovation and is home to
3 some of the world’s top talent,” including “more than 250 doctorate recipients from
4 some of the best schools around the globe.”⁸ According to a Samsung press release,
5 the “great successes” of the labs housed at the Media Solutions Center “benefit
6 Samsung’s vast portfolio of mobile, visual display, home appliance, wearable and
7 audio and stereo products.”⁹ Samsung also maintains and operates a Strategy and
8 Innovation headquarters “within Samsung’s Device Solutions division, with the
9 core missions of open innovation in collaboration with entrepreneurs and strategic
10 partners,” within this District. Not to mention, Samsung’s Information Systems
11 America and Semiconductor divisions are headquartered in this District, along with
12 an Open Innovation Center.¹⁰ Therefore, a substantial part of the events and/or
13 omissions alleged in this complaint, giving rise to Plaintiffs’ claims, occurred in,
14 emanated from, and/or were directed from this District. Venue is also proper
15 because Samsung is subject to this District’s personal jurisdiction with respect to
16 this action.

22 COMMON ALLEGATIONS OF FACT

23
24 *Footnote continued from previous page*

25 http://www.Samsung.com/us/aboutSamsung/Samsung_electronics/us_divisions/.

26 ⁸ “Research at the Core of SAMSUNG Research America’s New Mountain View Campus,” SAMSUNG Newsroom
(Sept. 1, 2015) available at: [https://news.SAMSUNG.com/global/research-at-the-core-of-SAMSUNG-research-](https://news.SAMSUNG.com/global/research-at-the-core-of-SAMSUNG-research-americas-new-mountain-view-campus)
27 [americas-new-mountain-view-campus](https://news.SAMSUNG.com/global/research-at-the-core-of-SAMSUNG-research-americas-new-mountain-view-campus).

28 ⁹ *Ibid.*

¹⁰ See SAMSUNG, U.S. Divisions, available at:

http://www.SAMSUNG.com/us/aboutSAMSUNG/SAMSUNG_electronics/us_divisions/.

1 17. Samsung Telecommunications and Samsung are part of the
2 multinational Samsung Group conglomerate, which is headquartered in Seoul,
3 South Korea. The Samsung Group has subsidiaries across widely varied industries,
4 including shipbuilding, construction, insurance, and aerospace as well as consumer
5 electronics. Samsung Electronics Co. Ltd., the parent of Defendant Samsung
6 Electronics, is currently the largest manufacturer (by revenue) of mobile phones in
7 the world.
8

10 18. Samsung engaged in a nationwide campaign where it advertised that
11 its Galaxy S7 Phones Are Water Resistant:
12

13 **Because Water Happens**

14 Bring on the spills, splashes and dunks. Now you won't need to put
15 your phone in a bowl of rice because of a little water.¹¹
16

17 19. In a national commercial, Samsung used the celebrity Dwayne
18 Michael Carter, Jr., known professionally as Lil Wayne, (best known for, *Tha Block*
19 *Is Hot, Lights Out, and 500 Degreez*), pouring champagne on a Galaxy S7 phone to
20 demonstrate its water-resistant quality. After answering the phone, he proceeded to
21 submerge the Galaxy S7 phone in a fish tank while the phone was still on. After
22 taking the phone out of the fish tank, he was still able to talk to his friend on the
23 phone.¹²
24
25

26 20. Indeed, Samsung advertised and represents that the Galaxy S7 is Water

27 ¹¹ <https://www.Samsung.com/us/mobile/phones/galaxy-s/Samsung-galaxy-s7-32gb-at-t-black-onyx-sm-g930azkaatt/>
last visited 1/1/2018.

28 ¹² <https://www.youtube.com/watch?v=g8XtahRoLYg>, last visited December 3, 2017)

1 Resistant “in up to 5 feet of water for up to 30 minutes.”

2 21. In Samsung’s Frequently Asked Questions, “Is My Galaxy S7 Dust
3 and Water Resistant?” Samsung states:
4

5 With Samsung’s most resilient mobile device yet, you can run in the
6 rain and play in the mud, spill on it, splash it, dunk it, then wipe it off
7 and keep going. The IP68 dust- and water-resistance Ingress
8 Protection rating means your device is completely protected against
9 dust, **and it is water-resistant in up to 5 feet of water for up to 30**
10 **minutes**. Your device has also passed military specification (MIL-
11 STD- 8106) testing against a subset of 20 specific environmental
12 conditions, including temperature, dust and sand, shock and vibration,
13 low pressure, and high altitude.¹³

14 22. Because of the advertisements and representations that Galaxy S7 is
15 Water Resistant, Plaintiff purchased a Samsung Galaxy S7 smartphone through
16 Verizon, in part because he wanted a water resistant smart phone that can be used
17 around the pool and can be used to take pictures in the pool. Plaintiff purchased the
18 phone for personal use.

19 23. Samsung has installed a moisture-detecting sticker in the Galaxy S7
20 phone. These stickers are located near points of entry on the phone’s enclosure at
21 places where liquid or moisture is most likely to breach the phone’s gaskets and
22 seals. These stickers allow Samsung to determine if any liquid or moisture has
23 entered the phone. The stickers appear white unless they are exposed to liquid or
24 moisture, but if the stickers are exposed to liquid or moisture, they turn a pink
25

26
27 ¹³ <https://www.Samsung.com/us/support/answer/ANS00047867/>, last visited
28 1/1/2018). (emphasis added).

1 color.

2 24. Samsung's inclusion of these moisture-detecting stickers evidences the
3 fact that the Galaxy S7 phone is not water resistant as represented. The moisture-
4 detecting stickers do not contribute to the S7 Phone's functionality. Nor do the
5 stickers provide any benefit to the user. Samsung inserts these stickers so that its
6 technicians can identify at a glance whether the phone's internal components have
7 come into contact with liquid or moisture.
8

9 25. Furthermore, Samsung does not apply a water-repellent coating to the
10 circuit board of the S7 Phone even though such technology is available. The lack of
11 such a coating renders the circuit board vulnerable to short-circuiting and corrosion.
12

13 **Industry Testing**

14 26. Industry testing that has been done on the Galaxy S7 phones
15 demonstrates that these phones are not water resistant.
16

17 27. SquareTrade a gadget testing business, did testing on whether the
18 Galaxy S7 was water resistant and found that "Samsung Galaxy S7 and S7 Edge
19 not quite waterproof, [...] tests reveal."¹⁴
20

21 28. In the test done by SquareTrade, all four superphones were submerged
22 in 5 feet (1.5 m) of water for 30 minutes. After performing the testing, SquareTrade
23 concluded: "The Galaxy S7 and S7 Edge stand up to water better than the iPhone 6s
24
25

26
27
28 ¹⁴ <https://www.cnet.com/news/Samsung-galaxy-s7-not-quite-waterproof-torture-tests-reveal>, last
visited, 1/1 2018).

1 and 6s Plus, but not without sustaining permanent damage.”¹⁵

2 29. Furthermore, Consumer Reports tested two Galaxy S7 Active units in
3 a pressure vessel, simulating a depth of “just under 5 feet” for 30 minutes. The
4 phones suffered water damage, particularly to the displays and power buttons.
5

6 30. Samsung has been riddled by complaints because of the lack of water
7 resistance for its Galaxy S7 phones.
8

9 31. For example, the following complaints have appeared online:

10 WARNING:

11 The Samsung Galaxy S7 is not WATER RESISTANT!!!

12 After dropping it in shallow water and immediately retrieving it, DRYING IT
13 OFF for 48 hours and placing it in rice for 24 additional hours, the phone
14 continues to have problems!The speakers in the phone have become
15 inaudible & I continue to receive an error message saying there is moisture in
16 the USB port making charging my phone an impossibility.

17 Samsung’s site state: “The phone is certified IP68, which means it’s resistant
up to 30 mins in the water at depths up to 5 feet.”

18 THAT IS NOT THE CASE WHATSOEVER.¹⁶

19 Samsung Galaxy S7 Edge water resistance failure

20 I told them in store when I returned with the phone, that I deliberately did a
21 water test in fairly shallow water (8” max) for no more than a couple of
22 minutes; which the phone failed miserably.¹⁷

23 32. Before Plaintiff purchased his Galaxy S7 phone, Plaintiff viewed
24 advertisements which Samsung represented that the Galaxy S7 is water resistant.
25

26 ¹⁵ (*Id.*)

27 ¹⁶ <https://it-it.facebook.com/SamsungMobileUSA/posts/10153536425141786> (last visited, 1/1/2018).

28 ¹⁷ <https://forums.androidcentral.com/Samsung-galaxy-s7-edge/715326-Samsung-galaxy-s7-edge-water-resistance-failure.html> (last visited, 1/1/2018)

1 Plaintiff never saw any advertisements in which Samsung disclosed the material
2 fact that the Galaxy S7 was not resistant to water less than 5 feet for 30 minutes.
3

4 **PLAINTIFF AND THE CLASS' INJURIES**

5 33. Plaintiff purchased the Galaxy S7 ("Subject Galaxy S7") on August 5,
6 2016 for \$672.00 and has been paying \$28.00 monthly installments since purchase.
7
8 Plaintiff's Subject Galaxy S7 had never been damaged or replaced up until the
9 events of June 23, 2017.

10 34. Plaintiff's Subject Galaxy S7 was in a Ziploc bag.
11

12 35. Plaintiff's Subject Galaxy S7 accidentally fell into a swimming pool.

13 36. The Ziploc bag had a leak and Subject Galaxy S7 was exposed to
14 water. The phone did not hit the bottom of the pool, but floated on the surface in the
15 Ziploc bag until it was removed less than a minute after it was exposed to the water.
16
17 At no point in time did the Subject Galaxy S7 go at or above five feet of water. The
18 Subject Galaxy S7 was only in contact with water for less than a minute.
19

20 37. Plaintiff's Subject Galaxy S7 was left damaged and unusable.

21 38. Plaintiff contacted Samsung directly to resolve his concerns prior to
22 filing suit, but Samsung refused to aid Plaintiff.
23

24 39. Plaintiff used his Verizon/Asurion insurance plan and paid the
25 deductible of \$149.00 to replace his phone with a new Galaxy S7.
26

27 40. Defendant (a) made material misrepresentations to Plaintiff and the
28 Classes when it stated that the Galaxy S7 was water resistant when it was not and

1 (b) made material omissions to Plaintiff and the Classes when it failed to disclose
2 that the Galaxy S7 was not water resistant.

3
4 41. Plaintiff and the Class have suffered injury in fact and lost money as a
5 result of Defendant's representations and omissions.

6 **CLASS ACTION ALLEGATIONS**
7

8 42. Plaintiff alleges and asserts the claims for relief herein on his own
9 behalf, and further seeks certification of this case as a class action on behalf of
10 similarly situated persons pursuant to Rule 23(b) of the Federal Rules of Civil
11 Procedure.
12

13 43. Specifically, Plaintiff requests certification on behalf of the following
14 Classes of individuals:
15

16 44. Nationwide Class:

17 All individuals in the United States who purchased a new Galaxy S7,
18 Galaxy S7 Edge, or Galaxy S7 Active cellular phone.

19 California Class: All individuals in California who purchased a new
20 Galaxy S7, Galaxy S7 Edge, or Galaxy S7 Active cellular phone.

21 Excluded from the Classes are (1) Defendant, Defendant's agents,
22 subsidiaries, parents, successors, predecessors, and any entity in
23 which Defendant or Defendant's parents have a controlling interest,
24 and those entities' current and former employees, officers, and
25 directors; (2) the Judge to whom this case is assigned and the Judge's
26 immediate family; (3) Any governmental entities and any
27 instrumentalities, subdivisions, agencies thereof; (4) any person who
28 executes and files a timely request for exclusion from the Class; (5)
any person who has had their claims in this matter finally adjudicated
and/or otherwise released; (6) the legal representatives, successors and
assigns of any such excluded person; (7) Counsel of record.

1
2 45. The claims for relief asserted herein satisfy the prerequisites for
3 certification as a class action pursuant to Federal Rule of Civil Procedure 23(b)(3):

4 a. There are questions of law or fact common to the classes;

5
6 b. The claims or defenses of the representative parties are typical of the
7 claims or defenses of the classes;

8 c. The representative party will fairly and adequately protect the interests of
9 the classes;

10
11 d. The questions of law or fact common to members of the classes
12 predominate over any questions affecting only individual members; and

13
14 e. A class action is superior to other available methods for fairly and
15 efficiently adjudicating the controversy.

16 46. **Numerosity.** The members of the Classes are so numerous that
17 joinder of all members would be impracticable. The exact number of class
18 members is unknown, however, likely numbers in the thousands, such that joinder
19 of individual claims in a single action would be impracticable. The identity of those
20 persons is within the knowledge of and can be ascertained by resorting to
21 Defendant's records.

22
23
24 47. **Commonality.** Plaintiff's and class members' claims raise
25 predominantly common factual and legal questions that can be answered for all
26 class plaintiffs through a single class-wide proceeding. For example, to resolve the
27
28

1 claims of any member of the classes, it will be necessary to answer the following
2 factual and legal questions:

3
4 a. Whether Samsung's advertising, marketing, and product packaging as
5 to the water resistance of its Galaxy S7 phones were untrue, misleading, or
6 reasonably likely to deceive;

7
8 b. Whether Samsung knew its conduct and statements were false, untrue,
9 misleading, or reasonably likely to deceive as to the water resistance of its Galaxy
10 S7 phones;

11
12 c. Whether Samsung's statements, conduct and/or omissions regarding
13 water resistance of its Galaxy S7 phones were material;

14
15 d. Whether Samsung made false representations concerning the water
16 resistance of its Galaxy S7 phones with the intent to induce consumers to rely upon
17 such representations;

18
19 e. Whether Samsung's conduct violated the California Consumers Legal
20 Remedies Act, Civil Code §1750, *et seq.*; and

21
22 f. Whether Defendant's conduct constituted unlawful, unfair, and/or
23 fraudulent business practices in violation of California's Unfair Competition Law
24 (the "UCL"), Business & Professions Code §17200, *et seq.*.

25
26 g. Whether Defendant's conduct constituted one or more violations of the
27 False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500, *et seq.*

28 h. Whether Defendant engaged in fraud; and

1 i. Whether Plaintiff and the Class were damaged.

2 48. **Typicality.** Plaintiff's claims are typical of each member of the
3
4 Classes claims because each arises from a common course of conduct by Samsung.

5 49. **Adequacy.** Plaintiff will fairly and adequately protect the interests of
6
7 the Classes. Plaintiff's interests do not conflict with the interests of the classes, and
8
9 Plaintiff has retained counsel experienced in complex class action litigation to
10 vigorously prosecute this action on behalf of the class.

11 50. **Predominance.** Common questions of law and fact predominate over
12
13 any questions affecting only individual members of the classes and a class action is
14 superior to individual litigation.

15 51. **Superiority.** Under the facts and circumstances set forth above, class
16
17 proceedings are superior to any other methods available for both fair and efficient
18
19 adjudication of the rights of each member of the Classes, because joinder of
20
21 individual members of the Classes is not practical and, if the same were practical,
22
23 said members of the classes could not individually afford the litigation, such that an
24 individual litigation would be inappropriately burdensome, not only to said citizens,
25
26 but also the courts.

27 52. To process individual cases would both increase the expenses and
28
cause delay not only to members of the Classes, but also to Samsung and the Court.

53. In contrast, a class action of this matter will avoid case management
difficulties and provide multiple benefits to the litigating parties, including

1 efficiency, economy of scale, unitary adjudication with consistent results, and equal
2 protection of the rights of each member of the Classes, all by way of the
3 comprehensive and efficient supervision of the litigation by a single court.
4

5 54. Notice of the pendency of the action and of any result or resolution of
6 the litigation can be provided to Class members by direct mail, the usual forms of
7 publication, and/or such other methods of notice as deemed appropriate by the
8 Court.
9

10 55. Without class certification, the prosecution of separate actions by
11 individual members of the Class described above would create a risk of inconsistent
12 or varying adjudications with respect to individual members of the Classes that
13 would establish incompatible standards of conduct for defendant, and/or
14 adjudications with respect to the individual members of the Classes that would, as a
15 practical matter, be dispositive of the interests of the other members not parties to
16 the adjudication, or would substantially impair or impede their ability to protect
17 their interest.
18
19
20

21 56. Defendant has acted or refused to act on grounds that apply generally
22 to the class and certification is therefore proper pursuant to Federal Rule of Civil
23 Procedure 23(b)(2).
24

25 57. **Injunctive and Declaratory Relief.** Plaintiff also brings this
26 class action under Fed. R. Civ. P. 23(b)(1) as a result of the Defendant's actions or
27 omissions set forth herein, which actions are generally applicable to all class
28

1 members thereby making final injunctive relief or declaratory relief concerning the
2 class as a whole appropriate.

3
4 **58. Certification of Particular Issues. Fed. R. Civ. P. 23(c)(4).**

5 Issue certification is also appropriate because the following particular issues
6 (among others) exist that may be brought or maintained as a class action:
7

8 a. Whether Samsung's advertising, marketing, and product packaging as
9 to the water resistance of its Galaxy S7 phones were untrue, misleading, or
10 reasonably likely to deceive;
11

12 b. Whether Samsung knew its conduct and statements were false, untrue,
13 misleading, or reasonably likely to deceive as to the water resistance of its Galaxy
14 S7 phones;
15

16 c. Whether Samsung's statements, conduct and/or omissions regarding
17 water resistance of its Galaxy S7 phones were material;
18

19 d. Whether Samsung made false representations concerning the water
20 resistance of its Galaxy S7 phones with the intent to induce consumers to rely upon
21 such representations;
22

23 e. Whether Samsung's conduct violated the California Consumers Legal
24 Remedies Act, Civil Code §1750, *et seq.*; and

25 f. Whether Defendant's conduct constituted unlawful, unfair, and/or
26 fraudulent business practices in violation of California's Unfair Competition Law
27 (the "UCL"), Business & Professions Code §17200, *et seq.*
28

g. Whether Defendant's conduct constituted one or more violations of the False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500, *et seq.*; and

h. Whether Defendant engaged in fraud.

FIRST CLAIM FOR RELIEF
Violation of the
California Consumers Legal Remedies Act, Civil Code §1750, et seq.
(By Plaintiff and the California Class Against Samsung)

59. Plaintiff re-alleges and incorporates by reference all paragraphs set forth above.

60. Plaintiff brings this Count on behalf of the California Subclass.

61. Plaintiff and the California Class are “consumers” as defined by the CLRA.

62. The Galaxy S7 phones are “goods” within the meaning of the CLRA.

63. Samsung is the “suppliers” and/or “sellers” within the meaning of the CLRA.

64. Samsung violated Civil Code § 1770(a)(2) by misrepresenting the approval or certification of goods.

65. Samsung violated Civil Code §1770(a)(5) by representing that the Galaxy S7 had characteristics, uses, and benefits that it did not have.

66. Samsung violated Cal. Civ. Code § 1770(a)(7) by representing that goods are of a particular standard, quality, or grade, when they are of another.

67. Samsung violated Civil Code §1770(a)(9) by advertising goods or

1 services with intent not to sell them as advertised.

2 68. Samsung violated Cal. Civ. Code § 1770(a)(14) by representing that a
3 transaction confers or involves rights, remedies, or obligations which it does not
4 have or involve, or which are prohibited by law.
5

6 69. Samsung violated Cal. Civ. Code § 1770(a)(16) by representing that
7 goods have been supplied in accordance with a previous representation when they
8 have not.
9

10 70. Plaintiff and the Class relied on Samsung's misrepresentations and
11 omissions in deciding whether to purchase the Galaxy S7.
12

13 71. As a direct and proximate result of Samsung's conduct, Plaintiff and
14 the Class were injured.
15

16 72. Plaintiff served Defendant with a CLRA notification and demand letter
17 via certified mail, return receipt requested. *See*, Exhibit A – Certified CLRA Letter
18 and Return Receipt. Defendant received the CLRA notification and demand letter
19 on February 8, 2018. *See*, Exhibit A – Certified CLRA Letter and Return Receipt.
20

21 73. The notice letter sets forth the relevant facts, notifies each Defendant
22 of its CLRA violations, and requests that Defendant promptly remedy those
23 violations.
24

25 74. Under the CLRA, a plaintiff may without prior notification file a
26 complaint alleging violations of the CLRA that seeks injunctive relief only. Then, if
27 the Defendant does not remedy the CLRA violations within 30 days of notification,
28

1 the plaintiff may amend her or his CLRA causes of action without leave of court to
2 add claims for damages. Plaintiff, individually and on behalf of the class, hereby
3 amends this complaint to add damages claims because Defendant has not remedied
4 its violations as to Plaintiff and the Class Members within the statutory period.
5

6 75. Pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiff, on behalf of
7 Plaintiff's self and the Class, demand judgment against Defendant under the CLRA
8 for damages, as well as, injunctive and equitable relief to enjoin the practices
9 described herein.
10

11 76. Plaintiff, individually and as a member of the Class, has no adequate
12 remedy at law for the future unlawful acts, methods, or practices as set forth above.
13

14 77. Pursuant to § 1780(d) of the CLRA, attached hereto as Exhibit B is the
15 affidavit showing that this action has been commenced in the proper forum.
16

17 78. In bringing this action, Plaintiff has engaged the services of attorneys
18 and has incurred reasonable legal fees and expenses in an amount to be proved at
19 trial.
20

21 79. Plaintiff is also entitled to recover Plaintiff's attorneys' fees, costs, and
22 expenses.
23

24 80. Plaintiff seeks damages and an order from this Court enjoining the
25 conduct alleged herein.
26

27 **SECOND CLAIM FOR RELIEF**
28 **Unfair Competition Law, Bus. & Prof. Code §17200, et seq.**
(By Plaintiff and the California Class Against Samsung)

1
2 81. Plaintiff incorporates and re-alleges all other paragraphs as if fully set
3 forth herein.

4 82. Plaintiff brings this Count on behalf of the California Subclass.

5
6 83. The conduct of Samsung alleged herein constitutes unlawful and unfair
7 business practices in violation of the UCL, Bus. & Prof. Code §17200, *et seq.*, in
8 that the violations of the CLRA also constitute unlawful, unfair, and/or fraudulent
9 business practices under the UCL.
10

11 84. Specifically, Defendant has violated the UCL by engaging in the
12 following unlawful, unfair, and/or fraudulent business practices:
13

14 a. Making material omissions and misrepresentations regarding the water
15 resistance of the Galaxy S7;

16 b. Violating the California Legal Remedies Act, California Civil Code §
17 1750, *et seq.* (the “CLRA”);
18

19 c. Violating the False Advertising Law (“FAL”), Cal. Bus. & Prof. Code
20 § 17500, *et seq.*); and
21

22 d. Violating Section 5 of the FTC; and/or

23 85. Samsung’s material omissions and/or misrepresentations were made
24 with the actual knowledge of Defendant.
25

26 86. Defendant intended for Plaintiff to rely upon the material omissions
27 and/or misrepresentations to induce them to purchase the Products.
28

1 87. The material omissions and/or misrepresentations set forth herein were
2 material to Plaintiff, and if Plaintiff had known that the products cause allergic
3 reaction that would burn and redden her face, Plaintiff would not have bought it.
4

5 88. The utility of Defendant's conduct is significantly outweighed by the
6 gravity of the harm they impose on Plaintiff and the Class. Defendant's acts and
7 practices are oppressive, unscrupulous, or substantially injurious to consumers.
8

9 89. The above-described unfair, unlawful, and/or fraudulent business
10 practices conducted by Defendant present a threat and likelihood of harm to
11 members of the Class in that Defendant has systematically perpetrated and continue
12 to perpetrate the unfair, unlawful, and/or fraudulent conduct upon members of the
13 public by engaging in the conduct described herein.
14
15

16 90. Plaintiff and the Class have suffered harm as a proximate result of the
17 wrongful conduct of the Defendant alleged herein, and therefore bring this claim for
18 relief for restitution and disgorgement. Plaintiff is a person who has suffered injury
19 in fact and has lost money and property as a result of such unfair competition.
20

21 91. Pursuant to Business and Professions Code §§ 17200 and 17203,
22 Plaintiff, on behalf of himself and the Class, seeks an order of this Court: enjoining
23 Defendant from continuing to engage in the deceptive practices contained herein.
24 Plaintiff further requests an order awarding Plaintiff and the Class restitution and
25 disgorgement of profits acquired by Defendant by means of such unfair, unlawful,
26 and/or fraudulent acts and/or practices, so as to deter Defendant and to rectify
27
28

1 Defendant's unfair, unlawful, and/or fraudulent practices and to restore any and all
2 monies to Plaintiff and the Class, which are still retained by Defendant, plus
3 interest and attorneys' fees and costs pursuant to, *inter alia*, Code of Civil
4 Procedure section 1021.5.
5

6 92. As a direct and proximate result of Defendant's conduct, Plaintiff and
7 the Class were damaged.
8

9 93. This Court may award attorney's fees to Plaintiff and the Class.
10 Defendant's conduct, as set forth above, is likely to deceive members of the public
11 and is immoral, unethical, oppressive, unscrupulous, and substantially injurious to
12 consumers.
13

14 94. To the extent that the conduct as set forth above is ongoing and
15 continues to this date, Plaintiff, the Class members, and the general public are,
16 therefore, entitled to the relief described herein.
17

18 95. Defendant, through their deceptive trade practices as described herein,
19 have obtained money from Plaintiff and members of the Class. Plaintiff, in fact,
20 has been injured by Defendant's conduct, as have members of the Class.
21

22 96. Plaintiff, individually and as a member of the Class, has no adequate
23 remedy at law for the future unlawful acts, methods, or practices as set forth above.
24

25 97. As such, Plaintiff seeks injunctive relief to enjoin the practices
26 described herein.
27

28 98. In bringing this action, Plaintiff has engaged the services of attorneys

1 and has incurred reasonable legal expenses in an amount to be proved at trial.

2 99. Samsung's acts, omissions, and practices constitute "unfair" practices
3 because they are contrary to California's legislatively declared policy condemning
4 deceptive advertising of goods and services. Samsung falsely represented that the
5 Galaxy S7 phone is water resistant when it is not.
6

7
8 100. The conduct of Samsung alleged herein also constitutes fraudulent
9 business practices in violation of the UCL, Bus. & Prof. Code §17200, *et seq.*, in
10 that said conduct was likely to deceive reasonable consumers.
11

12 101. In particular, Samsung's conduct is also fraudulent practice in that
13 Samsung represents that the Galaxy S7 Phone is water resistant despite the fact that
14 the phone's internal components are not water resistant. Also, Samsung conceals
15 that the gaskets and seals on the Galaxy S7 Phone's enclosure deteriorate with
16 normal usage, rendering the phone's internal components susceptible to damage
17 from water.
18

19
20 102. Bus. & Prof. Code §17203 provides that the Court may restore to any
21 person in interest any money or property which may have been acquired by means
22 of such violative conduct. As a direct and proximate result of the conduct alleged
23 herein acts, Plaintiff and the Class were injured and suffered the loss of money
24 through making purchases that they would not have made, or they would have paid
25 significantly less for them, in the absence of such conduct.
26
27

28 **THIRD CLAIM FOR RELIEF**

1 **(Violations of the False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §**
2 **17500, et seq.)**
3 **(By Plaintiff and the California Class)**

4 103. Plaintiff incorporates and re-alleges all other paragraphs as if fully set
5 forth herein.

6 104. Plaintiff brings this Count on behalf of the California Subclass.

7
8 105. Samsung, with the intent, directly or indirectly, to induce members of
9 the public to purchase Samsung’s goods, has made or caused to be made statements
10 to the public in California that were untrue or misleading about the water resistance
11 of the Galaxy S7 in violation of Bus. & Prof. Code §17500, *et seq.*

12
13 106. Samsung represents in a nationwide advertising campaign that the S7
14 Phone is water resistant when it is not.

15
16 107. Samsung is or should be aware through the exercise of reasonable
17 diligence that its statements regarding the S7 Phone’s water resistance are and were
18 false and misleading.

19
20 108. Plaintiff and other consumers were entitled to disclosure of these
21 defects, as the risk of these dangers would be a material fact in a consumer’s
22 decision to purchase the Products and Defendant’s disclosure is the only way
23 consumers could have learned of these risks.

24
25 109. As alleged in the preceding paragraphs, the misrepresentation and
26 omission by Defendant of the material facts detailed above constitutes false
27 advertising within the meaning of California Business & Professions Code § 17500.
28

1 110. In addition, Defendant's use of various forms of advertising media to
2 advertise, call attention to or give publicity to the sale of goods or merchandise that
3 are not as represented constitutes unfair competition, unfair, deceptive, untrue or
4 misleading advertising, and an unlawful business practice within the meaning of
5 Business & Professions Code §§ 17200 and 17531, which advertisements have
6 deceived and are likely to deceive the consuming public, in violation of Business &
7 Professions Code § 17500.
8

9
10 111. As a direct and proximate result of Samsung's acts and omissions in
11 violation of the FAL, Plaintiff and California Subclass members have been and
12 continue to be harmed. Samsung's violations of the FAL caused Plaintiff and
13 California Subclass members to suffer out-of-pocket losses. Plaintiff and California
14 Subclass members would not have purchased S7 Phones, or would have paid
15 significantly less for them, had Plaintiff and California Subclass members known
16 that, contrary to Samsung's false advertising, the phones are vulnerable to damage
17 from water.
18

19
20 Plaintiff brings this action under Business and Professions Code section 17535 to
21 enjoin the violations described herein and to require Samsung to issue appropriate
22 corrective disclosures. Plaintiff and California Subclass members thus seek: (a) an
23 order requiring Samsung to cease its false advertising; (b) full restitution of all
24 monies paid to Samsung as a result of its false advertising; (c) interest at the highest
25 rate allowable by law; and (d) payment of Plaintiff's reasonable attorneys' fees and
26
27
28

costs under applicable law, including Federal Rule of Civil Procedure 23 and California Code of Civil Procedure section 1021.5.

Wherefore Plaintiff prays for relief as set forth below.

**FOURTH CLAIM FOR RELIEF
(Fraud)
(On behalf of Plaintiff and the Classes)**

112. Plaintiff re-alleges and incorporates by reference all paragraphs set forth above.

113. Samsung's conduct as alleged herein constituted representations of material fact.

114. Samsung's representations about that the Galaxy S7 phone was water resistant were false.

115. Samsung knew the representations were false.

116. Samsung intended for Plaintiff and the Class to rely on those representations.

117. Plaintiff and the Class did rely on those representations.

118. Plaintiff and the Class were directly and proximately harmed by suffering the loss of money through making purchases that they would not have made, or they would have paid significantly less for them, in the absence of such conduct.

119. Samsung's conduct as alleged herein constitutes oppression, fraud, and/or malice such that Samsung is liable for punitive damages.

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Proposed Classes, demand judgment as follows:

B. An order awarding declaratory relief and temporarily and permanently enjoining Defendant from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

D. A declaration that Defendant is financially responsible for all Class notice and the administration of Class relief;

F. An order awarding any applicable statutory and civil penalties;

H. An award of costs, expenses, and attorneys' fees as permitted by law;

JURY DEMAND

WHEREFORE, Plaintiff demands a trial by jury on all issues so triable as a matter of right.

1 Dated: March 28, 2018

2 By: /s/ Francis J. "Casey" Flynn, Jr.
3 Francis J. "Casey" Flynn, Jr.
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17 **ATTORNEYS FOR PLAINTIFFS AND**
18 **THE PROPOSED CLASSES**

19 **CERTIFICATE OF SERVICE**

20 I HEREBY CERTIFY that on March 28, 2018, I electronically filed the
21 foregoing with the Clerk of the Court using the Court's CM/ECF system, which
22 will send a notice of electronic filing to all counsel of record.
23

24 /s/ Francis J. "Casey" Flynn, Jr.
25
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27
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